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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1975
No. 75-1176

JOSEPH M. KADANS,

Appellant,

vs.

STATE BAR OF NEVADA,

Appellee.

MOTION TO DISMISS.

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Appellee, pursuant to Rule 16 of the Rules of the Supreme Court, moves that the appeal from the Order Dismissing Petition of the Supreme Court of Nevada be dismissed on the ground that the questions presented have not been raised below or are so unsubstantial as not to warrant further argument.

Statement.

This is a direct appeal from an order of the Supreme Court of the State of Nevada dismissing a petition filed with such court seeking appellant's admission to practice law in Nevada under its Supreme Court Rule 72.5 "or under a slight modification of that Rule which the Nevada Supreme Court has authority to do" or alternatively an order permitting appellant to take the next scheduled bar examination (Petition below, pp. 5, 6).

Supreme Court Rule 72.5 authorizes the admission to practice in Nevada, under certain circumstances, of an instructor, professor or dean of the National College of State Trial Judges at the University of Nevada or of a law school that may be established as an integral part of the University of Nevada and approved by the appropriate committee of the American Bar Association (Jurisdictional Statement p. 5). Appellant did not challenge below the constitutionality of Rule 72.5.

Supreme Court Rule 51(6) requires an applicant seeking to take the Nevada Bar examination to be a graduate from a law school approved by the committee on legal education and admissions to the bar of the American Bar Association. Appellant did not graduate from a law school that was so accredited at the time he was graduated. In Point III of his Petition below appellant claimed that Rule 51(6) "needs to be modified to conform with" *Vlandis v. Kline*, 412 U.S. 441 (Petition below, p. 3). The rule itself does not appear to be challenged, except for the statement in Point IV, which is a threat to file a civil rights suit if relief is denied, where appellant states that "he has been denied the minimum standards of due process, now made clear by the decision of Vlandis v. Kline" (Petition below, p. 5).

In his Point III below, appellant contends that two persons were admitted to practice in Nevada who did not graduate from American Bar Association approved law schools and that "Thirteen years of denial of practice of one's occupation should be enough, especially when the denial was due to an unfortunate application of a law that is now clearly void and unconstitutional

both as to the State of Nevada and United States Constitutions as denying due process of the law and equal rights under the law" (Petition below, p. 4).

ARGUMENT.

Although the Jurisdictional Statement contends numerous questions are presented by the appeal such as a denial of appellant's right to travel and a violation of the Sherman Anti-Trust Act (Jurisdictional Statement pp. 6, 7) only matters shown in the Statement above were raised below. Questions now raised for the first time are of course not within this Court's appellate jurisdiction, 18 U.S.C. 1257(2).

In fact, no issue of the validity of any Nevada statute or rule was properly presented within the meaning of 18 U.S.C. 1257(2) to give this Court jurisdiction. The Petition filed in the Supreme Court of Nevada is most vague. No section of the United States Constitution or of a federal statute is cited. The only decision of this Court cited was *Vlandis v. Kline*, which appellant relied upon as warranting a modification of a Nevada Supreme Court Rule.

As held in *Oxley Stave Co. v. Butler County*, 166 U.S. 648, 655

> "the jurisdiction of this court to re-examine the final judgment of a state court cannot arise from mere inference, but only from averments so distinct and positive as to place it beyond question that the party bringing a case here from such court intended to assert a Federal right."

Because of the vagueness of the Petition below it is not surprising that the Nevada Supreme Court con-

strued it to be basically a request for modification of its rules dealing with admission to practice and not a matter for litigation.

Schware v. Board of Bar Examiners, 353 U.S. 232, 239, holds that a state can require high standards of qualification as a prerequisite to admission to practice. Nevada's requirement of graduation from an accredited law school is one of the Nevada standards of qualification. Nothing in *Vlandis v. Kline* affects Nevada's right to continue to require such qualification.

Conclusion.

The appeal should be dismissed.

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Attorney for Appellee.